

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 16 2018 ★

-----X
BRONTIE O'NEAL, :
Plaintiff, :
-against- :
WARDEN CHARLES EWALD, :
DOCTOR VINCENT GERACI, NURSE MARION :
WEBSTER, SUFFOLK COUNTY :
MUNICIPALITY, all in official and individual :
capacity, :
Defendants. :
-----X

LONG ISLAND OFFICE

ORDER
16-CV-4318 (JFB) (GRB)

JOSEPH F. BIANCO, District Judge:

On August 1, 2016, incarcerated *pro se* plaintiff Brontie O'Neal ("plaintiff") filed an *in forma pauperis* civil rights complaint against Warden Charles Ewald, Doctor Vincent Geraci, Nurse Marion Webster, and Suffolk County (collectively, "defendants") pursuant to 42 U.S.C. § 1983 ("Section 1983"). (ECF No. 1.) On October 5, 2017, plaintiff filed an amended complaint. (ECF No. 80.) On May 18, 2018, plaintiff filed a motion for an Order to Show Cause discussing alleged injuries, alleging that defendants failed to provide medical treatment, and requesting damages including \$3 million for failure to protect plaintiff from other violent inmates. (ECF No. 88 at 1-2.)

On June 6, 2018, Magistrate Judge Gary R. Brown issued a Report and Recommendation (the "R&R"). The R&R recommended that the Court deny plaintiff's motion for an Order to Show Cause, concluding that plaintiff was seeking remedies for allegations not set forth in the Amended Complaint. The R&R stated that any objections must be filed within fourteen days of service of the report. Plaintiff filed a status report on June 11, 2018 (Dkt. No. 92), and another motion for an Order to Show Cause on June 14, 2018 (Dkt. No. 91). Neither submission raised objections to the R&R. The date for filing any objections has thus expired, and plaintiff has not

filed any objection to the R&R. For the reasons set forth below, the Court adopts the R&R in its entirety, and denies plaintiff's motion for an Order to Show Cause.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf. 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3)* (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'") (quoting *Thomas*, 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the complaint, the amended complaint, and the R&R, the Court adopts the findings and recommendations contained in the R&R in their entirety. In particular, the current allegations in the Amended Complaint do not relate to the remedies sought in the Order to Show Cause. Accordingly,

IT IS HEREBY ORDERED that the motion for an Order to Show Cause (ECF No. 88) is denied.

~~SO ORDERED.~~

Joseph Bianco

~~JOSEPH F. BIANCO~~
UNITED STATES DISTRICT JUDGE

Dated: July 16, 2018
Central Islip, NY